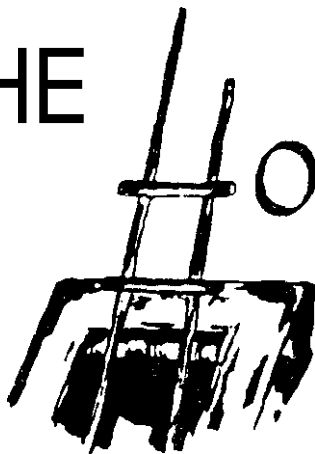


# THE



# OPI TRIBE

FILED/ACCEPTED

APR 17 2007

Federal Communications Commission  
Office of the Secretary

Wayne Taylor, Jr.

CHAIRMAN

VICE-CHAIRMAN

November 12, 2002

Jeffrey S. Steinberg, Deputy Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
Washington, D.C. 20554

FAX  
802 418 7224

Dear Mr. Steinberg,

Thank you for your correspondence to Chairman Taylor dated September 5, 2002, regarding your invitation to consult in the development of a Programmatic Agreement that is intended to streamline and define the Section 106 historic preservation review process for communications towers.

The Hopi Cultural Preservation Office provided the FCC the enclosed letter dated January 22, 2001, regarding the currently existing Programmatic Agreement for the review of antenna collocations under the National Historic Preservation Act. In that letter we enclosed, and enclose again with this letter, the U.S. Department of the Interior, Fish and Wildlife Service *Interim Guidelines for Recommendations on Communication Tower Siting, Construction, Operation and Decommissioning*. We have also repeatedly expressed our continuing concern regarding the cumulative impact on migratory birds from the proliferation of cellular telecommunications towers, particularly those over 200-feet

We are interested in procedures for instances in which facilities have been improperly constructed without prior Section 106 review, Guidelines for consulting with federally recognized Indian tribes and identifying, evaluating, and assessing effects on historic properties already exist. The State Historic Preservation Office has standard formats and procedures for submission of documentation.

The Hopi Cultural Preservation Office does not support expanding the existing Programmatic Agreement to involve additional exclusions. Please provide us with a copy of the current working draft Programmatic Agreement for review and comment. If you have any questions or need additional information, please contact Terry Morgart at the Hopi Cultural Preservation Office. Thank you again for your consideration.

Respectfully,

Leigh J. Kuwanwisiwma, Director  
Hopi Cultural Preservation Office

Staff Attorney -  
Anne Marie  
Wypiewski  
FAX 773 339 5799  
email: awypiew@fcd.com

Enclosures: U.S. Fish and Wildlife Service *Interim Guidelines and Tower Site Evaluation Form*  
cc: Office of the Chairman

Arizona and New Mexico State Historic Preservation Offices

Kamille McKeever, US Fish & Wildlife Service, Migratory Bird Permit Office, 500 Gold Ave., SW, Albuquerque, NM 87102

Dr. Benjamin N. Tuggle, John Andrews, US Fish and Wildlife Service

Dan Abeyta, Joel D. Taubenblatt, Geoffrey Blackwell, Alan A. Barna, Federal Communications Commission



Hopi Cultural Preservation Office

Benjamin H. Nuvamsa  
CHAIRMAN

Todd Honyaoma, Sr.  
VICE-CHAIRMAN

03-187

FILED/ACCEPTED

APR 17 2007

Federal Communications Commission  
Office of the Secretary

April 3, 2007

Jeffrey S. Steinberg, Deputy Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
Washington, D.C. 20554

Dear Mr. Steinberg,

Thank you for your correspondence dated December 4, 2006, regarding the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking seeking comment on possible rules that may reduce the effects of communications towers on migratory birds.

In the enclosed letters dated January 22, 2001, and November 12, 2002, the Hopi Cultural Preservation Office attempted to bring this issue to the attention of the FCC, Mr. Geoffrey Blackwell, and you. In those letters we enclosed, and enclose again, the September 14, 2000, U.S. Department of the Interior, Fish and Wildlife Service *Interim Guidelines for Recommendations On Communication Tower Siting, Construction, Operation and Decommissioning* that stated, "Communication towers are estimated to kill 4-5 million birds per year..." We expect this estimate must have greatly increased since 2000.

The Hopi Cultural Preservation Office has repeatedly expressed support for these guidelines and our continuing concern regarding the cumulative impact on migratory birds from the proliferation of cellular telecommunications towers, particularly those over 200-feet and/or guy-wired. Therefore, we support the FCC taking any and all measures to reduce the number of migratory bird collisions with communication towers, including but not limited to amending its rules to require tower applicants to prepare an environmental assessment if a proposed tower or antenna facility may affect migratory birds.

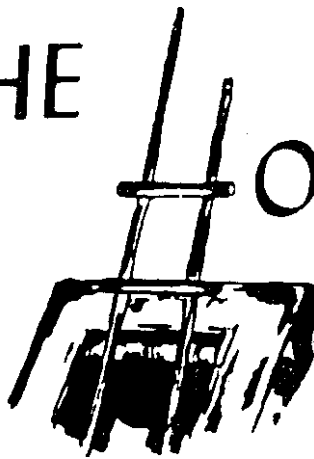
If you have any questions or need additional information, please contact Terry Morgart at the Hopi Cultural Preservation Office. Thank you again for your consideration.

Respectfully,

Leigh J. Kuwanwisiwma, Director  
Hopi Cultural Preservation Office

Enclosures: January 22, 2001, and November 12, 2002, letters  
U.S. Fish and Wildlife Service *Interim Guidelines* and Tower Site Evaluation *Form*

THE



HOPI TRIBE

FILED/ACCEPTED

APR 17 2007

Federal Communications Commission  
Office of the Secretary

Wayne Taylor, Jr.  
CHAIRMAN

Phillip R. Quochytewa, Sr.  
VICE-CHAIRMAN

January 22, 2001

Geoffrey C. Blackwell, Liaison to Tribal Governments, Attorney-Advisor, Consumer Information Bureau  
Federal Communications Commission, 415 Twelfth Street, S.W. 5-C864  
Washington, D.C. 20554

Dear Mr. Blackwell,

This letter is in response to your correspondence dated January 11, 2001, regarding proposed guidelines and a draft programmatic agreement for the review of antenna co-locations under the National Historic Preservation Act.

Since our enclosed letter dated December 23, 1999, in response to the Arizona State Historic Preservation Officer's enclosed letter dated December 7, 1999, the Hopi Tribe and the Hopi Cultural Preservation Office have commented on wireless telecommunications proposals state wide, in part in an attempt to conduct government-to-government consultations with the Federal Communications Commission (FCC). We have supported the enclosed Advisory Council on Historic Preservation's September 21, 2000, *Delegation of Authority for the Section 106 Review of Telecommunications Projects*, and we continue to support the Advisory Council and State Historic Preservation Office in their efforts to require the FCC to comply with the National Historic Preservation Act.

The *Delegation of Authority for the Section 106 Review of Telecommunications Projects* states: "In accordance with 36 CFR Section 800.2(c)(3), FCC shall insure that all consultations **with** Indian Tribes are conducted in a sensitive manner respectful of tribal sovereignty and the government to government relationship between the Federal government and Indian Tribes. This Memorandum, therefore, is not intended to modify or limit such requirements nor mandate that Indian Tribes consult with licensees and applicants or provide information if the Indian Tribes conclude that consultation should be directly **with** FCC."

The Hopi Cultural Preservation Office has provided project proponents, and we hereby provide you, **with** documents dated September 14, 2000, from the U.S. Department of the Interior, Fish and Wildlife Service regarding the *Service Interim Guidelines for Recommendations on Communication Tower Siting, Construction, Operation and Decommissioning*. The Hopi Tribe supports the Migratory Bird Treaty Act and the *Service Interim Guidelines*, and we have recommended that project proponents respond to the Fish and Wildlife Service Tower Site Evaluation Form.

The Hopi Tribe requests to consult with the FCC and the U.S. Fish and Wildlife Service directly on the cumulative impact of telecommunication proposals on migratory birds. Therefore, we cannot support the nationwide programmatic agreement to govern the review process under the National Historic Preservation Act **as** it applies to antennas placed on existing towers and existing non-tower structures ("co-located antennas"). until the FCC accepts our invitation to consult on this issue on a government-to-government basis. Please contact Thana Leslie at 520-734-3757 or Terry Morgart at 510-731-3767 to set up an appointment, or if you have any questions or need additional information. Thank you for your consideration.

Respectfully,

Leigh J. Kuwanwisiwma, Director  
Cultural Preservation Office

Marked 1/23/01 pcy

Enclosures:

- (1) December 7, 1999, letter from *SHPO* to FCC
- (2) December 23, 1999, letter from Hopi Chairman to *SHPO*,
- (3) September 21, 2000, letters from Advisory Council on Historic Preservation
- (4) September 14, 2000, letter from U.S. Fish and Wildlife

xc:

Office of the Chairman

James W. Garrison, State Historic Preservation Office, 1300 W. Washington, Phoenix AZ 85007

Dr. Benjamin N. Tuggle, Chief, Division of Habitat Conservation. U.S. Fish and Wildlife Service,  
Washington, D.C. 20240

John Andrew, Fish and Wildlife Service, Chief, Division of Migratory Bird Management,  
Washington, D.C. 20240

Magalie Roman Silas, ~~Office~~ of the Secretary, FCC, 445 Twelfth Street, S.W., TW-A325,  
Washington, DC 20554\

Joel D. Taubenblatt, Attorney-Advisor, Wireless Telecommunications Bureau, FCC,  
445 Twelfth Street, S.W., 4-A260, Washington, D.C. 20554



May 10  
Stine

# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



In Reply Refer To:  
FWS/FHC/DHC/BFA

### Memorandum

To: Regional Directors, Regions 1-7

From: Director /s/ Jamie Rappaport Clark SEP 1 2000

Subject: Service Guidance on the Siting, Construction, Operation and Decommissioning of Communications Towers

Construction of communications towers (including radio, television, cellular, and microwave) in the United States has been growing at an exponential rate, increasing at an estimated 6 percent to 8 percent annually. According to the Federal Communication Commission's 2000 *Antenna Structure Registry*, the number of lighted towers greater than 199 feet above ground level currently number over 45,000 and the total number of towers over 74,000. By 2003, all television stations must be digital, adding potentially 1,000 new towers exceeding 1,000 feet AGL.

The construction of new towers creates a potentially significant impact on migratory birds, especially some 350 species of night-migrating birds. Communications towers are estimated to kill 4-5 million birds per year, which violates the spirit and the intent of the Migratory Bird Treaty Act and the Code of Federal Regulations at Part 50 designed to implement the MBTA. Some of the species affected are also protected under the Endangered Species Act and Bald and Golden Eagle Act.

Service personnel may become involved in the review of proposed tower sitings and/or in the evaluation of tower impacts on migratory birds through National Environmental Policy Act review; specifically, sections 1501.6, opportunity to be a cooperating agency, and 1503.4, duty to comment on federally-licensed activities for agencies with jurisdiction by law, in this case the MBTA, or because of special expertise. Also, the National Wildlife Refuge System Improvement Act requires that any activity on Refuge lands be determined as compatible with the Refuge system mission and the Refuge purpose(s). In addition, the Service is required by the ESA to assist other Federal agencies in ensuring that any action they authorize, implement, or fund will not jeopardize the continued existence of any federally endangered or threatened species.

A Communication Tower Working Group composed of government agencies, industry, academic researchers and NGO's has been formed to develop and implement a research protocol to determine the best ways to construct and operate towers to prevent bird strikes. Until the research study is completed, or until research efforts uncover significant new mitigation measures, all Service personnel involved in the review of proposed tower sitings and/or the evaluation of the impacts of towers on migratory birds should use the attached interim guidelines when making recommendations to all companies, license applicants, or licensees proposing new tower sitings. These guidelines were developed by Service personnel from research conducted in several eastern, midwestern, and southern States, and have been refined through Regional review. They are based on the best information available at this time, and are the most prudent and effective measures for avoiding bird strikes at towers. We believe that they will provide significant protection for migratory birds pending completion of the Working Group's recommendations. As new information becomes available, the guidelines will be updated accordingly.

Implementation of these guidelines by the communications industry is voluntary, and our recommendations must be balanced with Federal Aviation Administration requirements and local community concerns where necessary. Field offices have discretion in the use of these guidelines on a case by case basis, and may also have additional recommendations to add which are specific to their geographic area.

Also attached is a Tower Site Evaluation Form which may prove useful in evaluating proposed towers and in streamlining the evaluation process. Copies may be provided to consultants or tower companies who regularly submit requests for consultation, as well as to those who submit individual requests that do not contain sufficient information to allow adequate evaluation. This form is for discretionary use, and may be modified as necessary.

The Migratory Bird Treaty Act (16 U.S.C. 763-762) prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. While the Act has no provision for allowing an unauthorized take, it must be recognized that some birds may be killed at structures such as communications towers even if all reasonable measures to avoid it are implemented. The Service's Division of Law Enforcement carries out its mission to protect migratory birds not only through investigations and enforcement, but also through fostering relationships with individuals and industries that proactively seek to eliminate their impact on migratory birds. While it is not possible under the Act to absolve individuals or companies from liability if they follow these recommended guidelines, the Division of Law Enforcement and Department of Justice have used enforcement and prosecutorial discretion in the past regarding individuals or companies who have made good faith efforts to avoid the take of migratory birds.

Comments from field personnel and the public on the proposed interim guidelines for communications tower siting should be copies of this memorandum, and should be directed to the following: Charles J. O'Neil, Director, Federal Bureau of Investigation, 400-2161, or

Jon Andrew, Chief, Division of Migratory Bird Management, at (703)358-1714. These guidelines will be incorporated in a Director's Order and placed in the Fish and Wildlife Service Manual at a future date.

Attachment

cc: 3012-MIB-FWS/Directorate Reading File  
3012-MIB-FWS/CCU Fils  
3245-MIB-FWS/AFHC Reading Files  
840-ARLSQ-FWS/AF Files  
400-ARLSQ-FWS/DHC Files  
400-ARLSQ-FWS/DHC/BFA Files  
400-ARLSQ-FWS/DHC/BFA Staff  
520-ARLSQ-FWS/LE Files  
634-ARLSQ-FWS/MBMO Files (Jon Andrew)

FWS/DHC/BFA/RWillis:bg:08/09/00:(703)358-2183  
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## Service Interim Guidelines For Recommendations On Communications Tower Siting, Construction, Operation, and Decommissioning

1. Any company/applicant/licensee proposing to construct a new communications tower should be strongly encouraged to collocate the communications equipment on an existing communication tower or other structure (e.g., billboard, water tower, or building mount). Depending on tower load factors, from 6 to 10 providers may collocate on an existing tower.
2. If collocation is not feasible and a new tower or towers are to be constructed, communications service providers should be strongly encouraged to construct towers no more than 199 feet above ground level, using construction techniques which do not require guy wires (e.g., use a lattice structure, monopole, etc.). Such towers should be unlighted if Federal Aviation Administration regulations permit.
3. If constructing multiple towers, providers should consider the cumulative impacts of all of those towers to migratory birds and threatened and endangered species as well as the impacts of each individual tower.
4. If at all possible, new towers should be sited within existing "antenna farms" (clusters of towers). Towers should not be sited in or near wetlands, other known bird concentration areas (e.g., State or Federal refuges, staging areas, rookeries), in known migratory or daily movement flyways, or in habitat of threatened or endangered species. Towers should not be sited in areas with a high incidence of fog, mist, and low ceilings.
5. If taller (>199 feet AGL) towers requiring lights for aviation safety must be constructed, the minimum amount of pilot warning and obstruction avoidance lighting required by the FAA should be used. Unless otherwise required by the FAA, only white (preferable) or red strobe lights should be used at night, and these should be the minimum number, minimum intensity, and minimum number of flashes per minute (longest duration between flashes) allowable by the FAA. The use of solid red or pulsating red warning lights at night should be avoided. Current research indicates that solid or pulsating (beacon) red lights attract night-migrating birds at a much higher rate than white strobe lights. Red strobe lights have not yet been studied.
6. Tower designs using guy wires for support which are proposed to be located in known raptor or waterbird concentration areas or daily movement routes, or in major diurnal migratory bird movement routes or stopover sites, should have daytime visual markers on the wires to prevent collisions by these diurnally moving species. (For guidance on markers, see *Avian Power Line Interaction Committee (APLIC)*, 1994, *Mitigating Bird Collisions with Power Lines: The State of the Art in 1994*, Edison Electric Institute, Washington, D.C., 78 pp. and *Avian Power Line Interaction Committee (APLIC)*, 1996, *Suggested Practices for Raptor Protection on Power Lines*, Edison Electric Institute Raptor Research Foundation, Washington, D.C., 128 pp. Copies can be obtained via the Internet at <http://www.eel.org/resources/publicat/enviro/>, or by calling 1-800-334-5453.)



7. Towers and appendant facilities should be sited, designed and constructed so as to avoid or minimize habitat loss within and adjacent to the tower "footprint." However, a larger tower footprint is preferable to the use of guy wires in construction. Road access and fencing should be minimized to reduce or prevent habitat fragmentation and disturbance, and to reduce above ground obstacles to birds in flight.

8. If significant numbers of breeding, feeding, or roosting birds are known to habitually use the proposed tower construction area, relocation to an alternate site should be recommended. If this is not an option, seasonal restrictions on construction may be advisable in order to avoid disturbance during periods of high bird activity.

9. In order to reduce the number of towers needed in the future, providers should be encouraged to design new towers structurally and electrically to accommodate the applicant/licensee's antennas and comparable antennas for at least two additional users (minimum of three users for each tower structure), unless this design would require the addition of lights or guy wires to an otherwise unlighted and/or unguyed tower.

10. Security lighting for on-ground facilities and equipment should be down-shielded to keep light within the boundaries of the site.

11. If a tower is constructed or proposed for construction, Service personnel or researchers from the Communication Tower Working Group should be allowed access to the site to evaluate bird use, conduct dead-bird searches, to place net catchments below the towers but above the ground, and to place radar, Global Positioning System, infrared, thermal imagery, and acoustical monitoring equipment as necessary to assess and verify bird movements and to gain information on the impacts of various tower sizes, configurations, and lighting systems.

12. Towers no longer in use or determined to be obsolete should be removed within 13 months of cessation of use.

In order to obtain information on the extent to which these guidelines are being implemented, and to identify any recurring problems with their implementation which may necessitate modifications, letters provided in response to requests for evaluation of proposed towers should contain the following request:

"In order to obtain information on the usefulness of these guidelines in preventing bird strikes, and to identify any recurring problems with their implementation which may necessitate modifications, please advise us of the final location and specifications of the proposed tower, and which of the measures recommended for the protection of migratory birds were implemented. If any of the recommended measures can not be implemented, please explain why they were not feasible."

## TOWER SITE EVALUATION FORM

1. Location ( Provide maps if possible):

State: \_\_\_\_\_ County: \_\_\_\_\_ Latitude/Longitude/GPS Grid: \_\_\_\_\_  
City and Highway Direction ( 2 miles W on Hwy 20, etc.) \_\_\_\_\_

2. Elevation above mean sea level: \_\_\_\_\_

3. Will the equipment be co-located on an existing FCC licensed tower or other existing structure (building, billboard, etc.)? (y/n) \_\_\_\_\_ If yes, type of structure: \_\_\_\_\_

If yes, no further information is required.

4. If no, provide proposed specifications for new tower:

Height: \_\_\_\_\_ Construction type (lattice, monopole, etc.): \_\_\_\_\_

Guy-aiiel? (y/n) \_\_\_\_\_ No. bands: \_\_\_\_\_ Total No. Wires: \_\_\_\_\_  
Lighting (Security & Aviation): \_\_\_\_\_

If tower will be lighted or guy-wired, complete items 5-19. If not, complete only items 19 and 20.

5. Area of tower footprint in acres or square feet: \_\_\_\_\_

6. Length and width of access road in feet: \_\_\_\_\_

7. General description of terrain - mountainous, rolling hills, flat to undulating, etc. Photographs of the site and surrounding area are beneficial:

\_\_\_\_\_  
\_\_\_\_\_

8. Meteorological conditions (incidence of fog, low ceilings, etc.): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

9. Soil type(s): \_\_\_\_\_

10. Habitat types and land use on and adjacent to the site, by acreage and percentage of total:

\_\_\_\_\_  
\_\_\_\_\_

11. Dominant vegetative species in each habitat type: \_\_\_\_\_

12. Average diameter breast height of dominant tree species in forested areas \_\_\_\_\_

13. Will construction at this site cause fragmentation of a larger block of habitat into two or more smaller blocks? (y/n) \_\_\_\_\_ If yes, describe: \_\_\_\_\_

14. Is evidence of bird roosts or rookeries present? (y/n) \_\_\_\_\_ If yes, describe: \_\_\_\_\_

15. Distance to nearest wetland area (forested swamp, marsh, riparian, marine, etc.), and coastline if applicable: \_\_\_\_\_

16. Distance to nearest telecommunications tower: \_\_\_\_\_

17. Potential for co-location of antennas on existing towers or other structures: \_\_\_\_\_

18. Have measures been incorporated for minimizing impacts to migratory birds? (y/n) \_\_\_\_\_  
If yes, describe: \_\_\_\_\_

19. Has an evaluation been made to determine if the proposed facility may affect listed or proposed endangered or threatened species or their habitats as required by FCC regulation at 47 CFR 1.1307(a)(3)? (y/n) \_\_\_\_\_ If yes, present findings: \_\_\_\_\_

20. Additional information required \_\_\_\_\_